

United States[?]
Circuit Court of Appeals
For the Ninth Circuit.

TERESA CASELLA,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigration
for the Port of San Francisco, California,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Second Division.

FILED

JUN -6 1929

PAUL P. O'DRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

TERESA CASELLA,

Appellant,

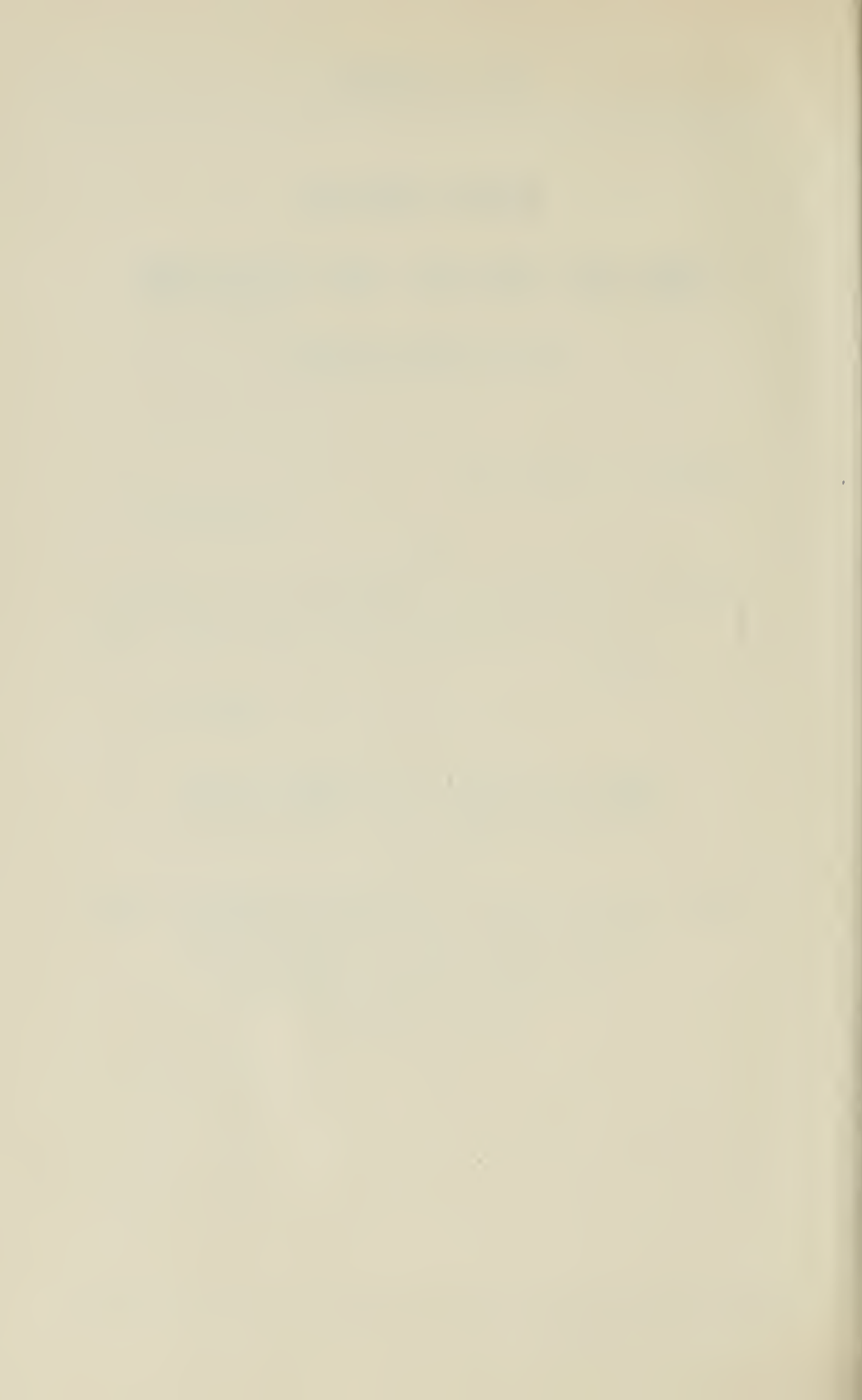
vs.

JOHN D. NAGLE, as Commissioner of Immigration
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Petitioner and Appellant:

JULIAN D. BREWER, Esq., 41 Sutter St.,
San Francisco, California.

For Respondent and Appellee:

U. S. ATTORNEY, San Francisco, Calif.

In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 19,555.

In the Matter of TERESA CASELLA on Habeas Corpus.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled District Court:

Sir: Please prepare transcript on appeal in the above matter and insert therein the following papers, pleadings and orders in said proceeding to wit:

1. Petition for writ of habeas corpus (omitting therefrom the copy of the record of the proceedings before the immigration authorities, inasmuch as it has been stipulated that the original record of these proceedings may be transmitted to the Clerk of the Circuit Court of Appeals, with a further stipulation that the same need not be printed in the transcript of the record).

2. Order to show cause.
 3. Demurrer to petition.
 4. Judgment and order sustaining demurrer and denying petition for writ of habeas corpus.
 5. Notice of appeal.
 6. Petition for appeal.
 7. Assignment of errors.
 8. Order allowing appeal. [1*]
 9. Stipulation and order concerning record of deportation proceedings.
 - 9-A. Citation on Appeal.
 10. Praeceptum for transcript.
- Dated February 3, 1928.

JULIAN D. BREWER,
Attorney for Petitioner and Appellant.

[Endorsed]: Service of the within notice of appeal, petition for appeal, order allowing appeal and praecipe for transcript on appeal is duly admitted this 3 day of February, 1928.

GEO. J. HATFIELD.

Filed Feb. 3, 1928. [2]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

19,555.

In the Matter of TERESA CASELLA on Habeas Corpus.

*Page-number appearing at the foot of page of original certified Transcript of Record.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable United States District Judge
now Presiding in the United States District
Court, in and for the Northern District of Cali-
fornia, Second Division:

The petition of Mrs. Mary E. Fuella respectfully
shows:

I.

That your petitioner is the daughter of Teresa Casella, the detained above named, and makes this petition for and as the act of her said mother because her detention, as hereinafter set forth, makes it impossible for her to verify this petition on her own behalf.

II.

That your petitioner's said mother, Teresa Casella, is forcibly detained and restrained of her liberty by color of the authority of the United States in the custody of John D. Nagle, Esq., Commissioner of Immigration for the port of San Francisco, California.

III.

That the sole claim and sole authority by virtue of which the said John D. Nagle, Commissioner of Immigration as aforesaid so restrains and detains your petitioner's said mother is a certain paper which purports to be a warrant of deportation dated September 14, 1927, and signed by W. N. Smelzer, Assistant to the United States Secretary of Labor.

IV.

That upon information and belief the said warrant of deportation was issued by said W. N. Smelser, Assistant to the United States Secretary of Labor in a certain proceeding before the immigration authorities at the port of San Francisco upon the charge that your petitioner's said mother, Teresa Casella, had been found in the United States in violation of the Immigration Act of February 5, 1917, to wit, "that she has been found managing a house of prostitution, or music or dance hall or other place of amusement or resort habitually frequented by prostitutes." That your petitioner's said mother, Teresa Casella, the detained, had a trial or hearing during said proceedings before the immigration authorities at San Francisco and at the conclusion of which said detained was adjudged an alien found in the United States violating the immigration laws on the grounds as aforesaid and she was ordered deported by said Secretary of Labor, said order being for deportation to Italy.

V.

That attached hereto and made a part hereof, as certified by W. E. Walsh, Inspector in charge of the San Francisco office of the United States Immigration Service, in his letter of December 30th, 1927, is a complete copy of the record of the hearing accorded to the detained at San Francisco, including a copy of the warrant issued for her arrest and a copy of the warrant directing her deportation to Italy.

VI.

Upon information and belief your petitioner's said mother, Teresa Casella, the detained, was not guilty of nor was not found "managing a house of prostitution, or music or dance hall or other place of amusement or resort habitually [4] frequented by prostitutes."

VII.

Upon information and belief the said order of deportation of your petitioner's said mother from the United States to Italy is illegal and contrary to law for the following reasons, to wit:

First: That the trial or hearing of the detained before the immigration authorities at San Francisco was manifestly unfair and that there was a manifest abuse of the authority committed to them by the statutes in each of the following particulars:

(a) The annexed copy of the record of the hearing accorded the detained by the immigration authorities at San Francisco on April 20th, 1927, conclusively shows that a sworn statement was taken from the detained by an immigration inspector in Sacramento, California, on February 26th, 1927, and that the same was exhibited to the detained at said hearing. However, the immigration authorities, as it would appear from the record, in violation of the rights of the alien and immigration law and procedure, and without the knowledge or consent of the detained, attached to the record a damaging statement which purports to have been taken from the detained on an entirely different date from

the one referred to at the hearing, to wit, one which purports to have been taken from the alien on February 25th, 1927. The purported statement referred to is among the papers in the annexed record and is marked Exhibit "A." The rights of detained were greatly prejudiced by said statement which detained never had an opportunity to deny, refute or explain. That this alleged statement of the detained dated February 25th, 1927, worked an injustice on her is shown by the fact that it was made one of the [5] principal bases upon which the detained was ordered deported, as clearly shown by specific reference to its contents by the examining inspector, T. E. Borden, in his summary and recommendation which is part of the annexed record and marked Exhibit "B."

(b) The annexed copy of the record of the hearing accorded the detained on the date and at the place aforesaid conclusively shows that a certain letter purported to have been written by Inspectors A. J. Phelan and P. J. Farelly on February 26th, 1927, was incorporated in the record without the same having been shown to the detained or her attorney. However, the immigration authorities, as it would appear from the record, in violation of the rights of the alien and immigration laws and procedure, and without the knowledge or consent of the detained, attached to the record a damaging letter which purports to have been written by said Inspectors A. J. Phelan and P. J. Farelly on an entirely different date from the one referred to at the hearing, to wit, a letter written by them in refer-

ence to the detained dated February 25th, 1927. The purported letter referred to is among the papers in the annexed record and is marked Exhibit "C." The rights of detained were prejudiced by said letter or any other letter which may have been introduced at said hearing, because the record conclusively shows that no letter signed by Inspectors Phelan and Farelly was ever shown to the alien or to her attorney during the hearing, nor does the record of the hearing make mention of the letter of February 25th, 1927, which, without the knowledge or consent of the alien and without her having an opportunity to deny or refute [6] was added to the record. That the letter of February 25th, 1927, injured the detained is conclusively shown by the summary and recommendation of the examining inspector, T. E. Borden, in which specific reference is made to the contents of this letter and which was one of the bases for his recommendation of deportation, which is part of the annexed record and marked Exhibit "B."

(c) That when the original record of the proceedings in this matter were forwarded to the Secretary of Labor at Washington, D. C., after the hearing, the Secretary of Labor, or his assistant, illegally and contrary to law likewise based his order of deportation upon the aforesaid purported statement of the alien taken February 25th, 1927, and the letter of Inspectors Phelan and Farelly dated February 25th, 1927, as is shown by reference to his memorandum of findings attached to the original record now in the possession of the United

States District Attorney. This is further proof that detained was not accorded a fair hearing.

(d) That further, in making part of the record, the purported statement of the alien taken on February 25th, 1927, marked Exhibit "A," and which, according to the record, was not under consideration nor shown to the detained nor to her attorney, evidence was received and acted on without the knowledge or consent of the detained, which was entirely irrelevant to the issue. The charge against the alien as hereinbefore stated, was that she had been found "managing a house of prostitution, music or dance hall or other place of amusement or resort habitually frequented by prostitutes." The purported statement of the alien taken February 25th, 1927, contains no statement bearing upon the charge set forth above. Her alleged admission that she had "sported in Alaska" which, if done at all, was done [7] before coming to the United States some thirteen or fourteen years ago, was one of the principal reasons given by T. E. Borden, the examining immigration inspector, in his summary and recommendation (Exhibit "B") why she should be deported on the charge aforesaid. In other words, contrary to law, she was charged with one offense and ordered deported upon purported testimony at worst relating to a different offense altogether which, if it occurred, took place thirteen or fourteen years before in Alaska.

(e) That in the warrant of arrest of the detained, part of the record of the case herein marked Exhibit "D" that "she has been found in the

United States in violation of the Immigration Act of February 5, 1927, for the following, among other reasons: that she has been found managing a house of prostitution, or music or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes." That this warrant of arrest was in violation of the law for the following reason, to wit: It would appear from the warrant of arrest that there were more reasons (which were not disclosed to the alien) for her arrest other than those set forth in the warrant. This fact is clearly contrary to law because defendant was never advised of what "among other reasons" consisted of or referred to and therefore could not meet them in any way.

Second: That there is no substantial evidence in the record to sustain the action of the Secretary of Labor in his finding that the detained had been found "managing a house of prostitution, or music or dance hall, or other place of amusement or resort habitually frequented by prostitutes." There is no evidence to show that an act [8] of prostitution was ever committed in detained's boarding-house at Sacramento, California. There is no evidence to show that detained's boarding-house at Sacramento had a reputation as a house of prostitution or as a place or resort habitually frequented by prostitutes or that prostitutes were ever there. Eliminating the purported statement taken from the alien on February 25th, 1927, and the purported letter by Inspectors Phelan and Farelly dated Feb-

ruary 25th, 1927, which were not referred to during the hearing and which legally have no place in the record, there is no semblance of substantial proof against the detained on the charge and that under the circumstances and irregularities pointed out herein it was error of law for the immigration authorities to recommend the deportation of detained upon the record herein.

Third: That the Secretary of Labor has no jurisdiction to deport the detained and his order so to do is in contravention of law because until the immigration proceedings or hearings are regular, "due process of law" which the detained is entitled to has not been accorded the alien and which must obtain before the Secretary of Labor has jurisdiction to deport an alien in this country.

VIII.

That it is the intention of John D. Nagle, Esq., the said Commissioner of Immigration of the port of San Francisco, to deport the said detained out of the United States and away from the land of which she has long been a resident on or about the 10th day of February, 1927, and unless this court intervenes to prevent said deportation, the said detained will be deprived of residence in the United States. [9]

IX.

That on October 14th, 1927, your petitioner filed a petition for writ of habeas corpus in behalf of her mother and that on said day the above-entitled

court made an order to show cause in relation thereto. That thereafter the United States District Attorney interposed a demurrer to said petition and that on December 3d, 1927, the demurrer was sustained and your petitioner's petition dismissed and the detained was ordered surrendered. That the aforesaid petition filed on October 14th, 1927, was drawn by counsel representing your petitioner, who did not have a copy of the record of the proceedings before the immigration authorities in reference to your petitioner's mother, Teresa Casella, as hereinabove set forth and that therefore your petitioner's former attorney was incapable of presenting a petition accurately setting forth the grounds why the writ should be issued. The within writ is accompanied by the record in the proceedings and contains different and additional grounds why your petitioner believes the writ should be issued as prayed herein.

WHEREFORE your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to John D. Nagle, Esq., Commissioner of Immigration of the port of San Francisco, commanding and directing him to hold the body of said detained within the jurisdiction of this court, and to present the body of the said detained before this court at a time and place to be specified in said order, together with the time and cause of her detention so that the same may be inquired into to the end that the said detained may be restored to her liberty and go hence without day. [10]

Dated at San Francisco, California, January 3d,
1928.

MRS. MARY E. FUELLA,
(J. D. B.)
Petitioner.

JULIAN D. BREWER,
Attorney for Petitioner and Detained Herein.

[11]

United States of America,
State of Nevada,
County of Washoe,—ss.

Mrs. Mary E. Fuella, being duly sworn, deposes and says: That she is the petitioner named in the foregoing petition; that she has read the foregoing petition and knows the contents thereof and that the same is true of her own knowledge except as to those matters stated therein on information or belief and as to those matters that she believes it to be true. That she is the daughter of Teresa Casella, the detained herein, of the age of 23 years, *years*, and that she makes this verification for and on behalf of her said mother, Teresa Casella, because her said mother is detained by the immigration authorities of San Francisco at Angel Island and is unable to verify this petition.

MRS. MARY E. FUELLA.

Subscribed and sworn to before me this 3d day of January, 1928.

[Seal]

J. D. POOLE,

Notary Public in and for Washoe County, State of Nevada.

My commission expires October 11, 1931.

[Endorsed]: Filed Jan. 6, 1928. [12]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Upon reading and filing the petition of Teresa Casella praying for issuance of a writ of habeas corpus, IT IS HEREBY ORDERED that John D. Nagle, Commissioner of Immigration for the port of San Francisco, California, appear before this court on the 16th day of January, 1928, at the hour of 10 o'clock A. M. of said day, to show cause if any he has why a writ of habeas corpus should not issue in this matter as herein prayed.

IT IS FURTHER ORDERED that John D. Nagle, Commissioner of Immigration as aforesaid, or whoever, acting under the orders of said Commissioner or the Secretary of Labor of the United States shall have the custody of said Teresa Casella, are hereby ordered and directed to detain the said Teresa Casella within the custody of the said Commissioner of Immigration and within the jurisdiction of this court until its further order herein.

IT IS FURTHER ORDERED that a copy of this order be served on the said John D. Nagle, or

such other person having the said Teresa Casella in custody as an officer of the said John D. Nagle.

Dated, San Francisco, California, January 9th, 1928.

FRANK H. KERRIGAN,
District Judge. [13]

[Endorsed]: Service and receipt of a copy of the within order to show cause, and a copy of the petition in the within matter are hereby admitted this 9th day of January, 1928.

GEO. J. HATFIELD,
U. S. Attorney.

By R. M. LYMAN,
Asst. U. S. Dist. Atty.

By A. J. PHELAN,
Inspector, U. S. Immigration Service.

Filed Jan. 10, 1928. [14]

[Title of Court and Cause.]

DEMURRER TO PETITION FOR WRIT OF
HABEAS CORPUS.

Comes now the respondent, John D. Nagle, Commissioner of Immigration at the Port of San Francisco, in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts suffi-

cient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the hearing of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

GEO. J. HATFIELD,
By R. M. LYMAN, Jr.,
United States Attorney,
Attorney for Respondent.

[Endorsed]: Filed Jan. 21, 1928. [15]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 21st day of January, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—JANUARY 21, 1928—
ORDER SUBMITTING DEMURRER.

This matter came on regularly this day for hearing on order to show cause as to the issuance of a

writ of habeas corpus herein. Counsel for petitioner and detained was present. R. M. Lyman, Jr., Esq., Asst. U. S. Atty., was present for and on behalf of respondent, and filed demurrer to petition, and all parties consenting thereto, IT IS ORDERED that the immigration records be considered as part of original petition. After argument by respective attorneys, the Court ordered that said matter be and the same is hereby submitted. [16]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 23d day of January, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—JANUARY 23, 1928—
ORDER SUSTAINING DEMURRER, ETC.

It is ordered that the demurrer to the petition for writ of habeas corpus, heretofore submitted, be and the same is hereby sustained and said petition dismissed accordingly. [17]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court and to the Honorable GEORGE J. HATFIELD, United States Attorney for the Northern District of California:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Teresa Casella, the petitioner and detained above named, does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the order and judgment made and entered herein on the 23d day of January, 1928, sustaining the demurrer to and denying the petition for a writ of habeas corpus filed herein.

Dated February 2d, 1928.

JULIAN D. BREWER,

Attorney for Petitioner and Appellant Herein.

[18]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Now comes the above-named Teresa Casella, petitioner and appellant, and by her attorney, Julian D. Brewer, says that on the 23d day of January, 1928, an order and judgment was entered and made herein denying a petition in her behalf for a writ of habeas corpus prayed for and remanded her to the custody and imprisonment complained of in her said petition; and the petitioner

now says that in the record, proceedings and judgment herein manifest errors have occurred to the great prejudice and injury of petitioner, all of which more fully appears from her assignment of errors filed with said petition.

WHEREFORE the petitioner and appellant prays that an appeal may be granted in her behalf in the Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled matter as shown by the praecipe duly authenticated may be transmitted to the said Circuit Court of Appeals; and further, that the said appellant be allowed to remain at large under her present bail bond fixed at \$1,000, pending the final determination of this matter.

Dated February 1st, 1928. [19]

JULIAN D. BREWER,

Attorney for Petitioner and Appellant Herein.

[20]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes Teresa Casella, petitioner and appellant, by her attorney, Julian D. Brewer, and says that in the record and proceedings and judgment herein manifest errors have intervened to the great injury and prejudice of said appellant, who assigns said errors as follows:

1. That the Court erred in holding that the allegations contained in the petition herein for a writ of habeas corpus and the facts presented upon the issue in reference made and jointed herein were insufficient in law to justify the discharge of petitioner from custody as prayed for in said petition.

2. That the Court erred in sustaining the demurrer and in denying the petition for a writ of habeas corpus herein and remanding the petitioner to the custody of the immigration authorities for deportation.

3. The Court erred in not holding that the proceedings for petitioner's deportation were manifestly unfair and that there was a manifest abuse of the authority committed [21] to the immigration authorities and the Secretary of Labor upon the allegations contained in the petition for a writ of habeas corpus and the facts presented upon the issue in reference to the record made and joined herein.

4. That the Court erred in holding that any competent or sufficient or any evidence warranting the deportation of petitioner had been adduced in said deportation proceedings.

5. That the Court erred in holding that the Secretary of Labor had jurisdiction to deport petitioner upon the evidence adduced at the hearing before the immigration authorities.

WHEREFORE petitioner and appellant prays that said order and judgment discharging the order to show cause, sustaining the demurrer, and denying the petition for a writ of habeas corpus be re-

versed and that this cause be remitted to said lower court with instructions to issue the writ of habeas corpus as prayed for in said petition.

Dated: February 3d, 1928.

JULIAN D. BREWER,
Attorney for Petitioner and Appellant.

[Endorsed]: Service and receipt of a copy of the within assignment of errors is hereby admitted this 3 day of February, 1928.

GEO. J. HATFIELD,
United States Attorney.

Filed Feb. 3, 1928. [22]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND FOR
SUPERSEDEAS AND BAIL.

Upon *read* and filing the petition of the above-named Teresa Casella presented by her attorney, Julian D. Brewer, for appeal and her assignment of errors presented therewith, IT IS ORDERED that the appeal as prayed for be, and it is hereby, allowed. And it appearing to the Court that a citation has been duly issued and served as provided by law, IT IS FURTHER ORDERED that petitioner and appellant be admitted to bail pending the final determination of the appeal in the sum of \$1,000, the appeal to operate as a supersedeas. The cost bond on appeal is hereby fixed at the sum of \$250.

IT IS FURTHER ORDERED that petitioner may remain at large until said appeal is decided, upon her present bail bond of \$1,000, which is hereby accepted and continued in force for the purpose of said appeal.

Dated February 3d, 1928.

FRANK H. KERRIGAN,
District Judge. [23]

[Title of Court and Cause.]

STIPULATION THAT THE RECORD OF DEPORTATION PROCEEDING AGAINST APPELLANT BEFORE THE IMMIGRATION AUTHORITIES MAY BE TRANSMITTED TO THE CLERK OF THE CIRCUIT COURT OF APPEALS AND THAT THE SAME NEED NOT BE PRINTED IN THE TRANSCRIPT OF THE RECORD.

IT IS HEREBY STIPULATED that the record of the proceedings for the deportation of the above-named appellant and petitioner before the United States Immigration Authorities may be transmitted to the Clerk of the Circuit Court of Appeals for the Ninth Circuit and become a part of the record of this appeal and that the same need not be printed in the transcript of said record.

Dated February 3d, 1928.

GEO. J. HATFIELD,
United States Attorney.
T. J. SHERIDAN,
Asst. United States Attorney.
JULIAN D. BREWER,
Attorney for Appellant.

It is so ordered.

FRANK H. KERRIGAN,
District Judge.

[Endorsed]: Filed Feb. 3, 1928. [24]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 24 pages, numbered from 1 to 24 inclusive, contain a full, true and correct transcript of the records and proceedings in the matter of *Teresa Casella*, on Habeas Corpus, No. 19,555, as the same now remain of file and of record in this office.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of nine dollars and fifty cents (\$9.55), and that the same has been paid to me by the attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 15th day of May, A. D. 1928.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,
Deputy Clerk. [25]

[Endorsed]: No. 5495. United States Circuit Court of Appeals for the Ninth Circuit. Teresa Casella, Appellant, vs. John D. Nagle, as Commissioner of Immigration for the Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed May 18, 1928.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

